Secrt. II-27—100,006—21-5-53.

Food (1949) Department.

MS SERIES.

G.O. No. 117

117

Dated 31-1-49

[Despatch Abstract.]

Foodgrains - Imported foodgrains reserved at several ports in the Province - Agreement entered into with forwarding agents - Recovery of sum due to Government as arrears of land revenue under Land Revenue Recovery Act - Papers recorded.

Extract from the note file relating to recovery of training and tuition fees and stipends granted to Ex-Servicemen for Co-operative Training.

Public (Resettlement) Department. (C.No. 1557/47.).

Post War Reconstruction - Co-operative Training for Ex-Servicemen - Training and payment of tuition fees and stipends - Clarification of conditions.

x x x

FINANCE DEPARTMENT

(Finance last noted on above).

The summarising note on pages 11-13 above and the draft below may be perused and the case passed on to Legal.

x x x
9.8.48.

"The Legislature can of course say that any particular sum due to Government may be recovered as if it were an arrear of land revenue. But whether the effect will be the same if this is embodied in an agreement is a question which may be specifically considered by Legal. If the answer is in the affirmative we would have an easy solution for the thousand and one cases in which Govt. have now to go to Court, e.g. lease rents, sums recoverable under contracts and the question whether a similar clause may not be inserted in lease deeds and other contracts so as to make those sums also recoverable as if they were arrears of land revenue may be considered.

Personally I doubt whether a clause in an agreement is sufficient to make a certain arrear due to Government recoverable as if it were in arrear of land revenue."

T.N.S.Ragavan,
10.8.48.

LEGAL DEPARTMENT

Section 52 of the Madras Revenue Recovery Act provides that all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of a contract may be recover in the same manner as arrears of land revenue under the provisions of that Act, unless the recovery thereof is otherwise specially provided for. There is therefore no legal objection to the insertion of a clause in the agreement to be executed by the trainee that a breach of the conditions of the agreement will render him liable to repay the tuition fees and other sums received by him during the period of training and that they are liable to be recovered as arrears of land revenue under Madras Act II of 1864.

K.S.
26.8.48.

P.V.B.
26.8.

FINANCE (EXPENDITURE) DEPARTMENT

Previous Finance note above, and the notes following may be perused.

2. Legal have stated that section 52 of the Revenue Recovery Act provides that all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of a contract may be recovered in the same manner as arrears of land revenue under the provisions of that Act, unless, the recovery thereof is otherwise specially provided for. With reference to Secretary's remarks at 'B' above, Development may be requested to communicate relevant extracts of notes from this file to the Departments of the Secretariat (all sections) for information and necessary action. This is a ruling of great importance; it would save the Government the botheration of having to go to a Court of Law. Where standard forms are now laid down for contracts, leases, etc. they might well be revised so as to contain an additional clause making the amounts due to the Government recoverable as if they were arrears of land revenue.

Yes. The Deptts. concerned may consider the possibility of inserting an additional clause such as suggested in as many forms for contracts leases, etc. as possible.

T.N.S.R.
23.9.48.

G.K.G.
23.9.48.

DEVELOPMENT DEPARTMENT

The Finance Department's note above may be perused. With reference to 'X' above necessary extracts may be communicated to all Departments of the Secretariat (all sections) for information and necessary action.

"Yes. Communicate extracts sufficiently completed to enable Departments to follow the opinion of Legal".

S.G.A.
1.10.48.

/True extracts/

To

All Departments of the Secretariat (All sections).

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FOOD DEPARTMENT

Foodgrains - Imported foodgrains received at ~~served~~ Several ports in the Province - Agreement entered into with forwarding agents - Recovery of sums due to the Provincial Government as arrears of land revenue.

Development Department U.O. Note dated 1.10.1948.

In a Development Department's file the

Legal have stated that section 52 of the Revenue Recovery Act provides that all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of contract may be recovered in the same manner as arrears of land revenue under the provisions of that Act, unless, the recovery thereof is otherwise specially provided for. The above opinion of the Legal Department has been communicated to all the Departments of the Secretariat to consider the possibility of inserting an additional clause making the amounts due to the Government recoverable as if they were arrears of land revenue in as many forms of contracts leases, etc. as possible, to save the Government the botheratio of having to go to a court of law.

This section is concerned with the agreement entered into by the Government with the clearing and forwarding agents appointed at several ports in the Province. The form of the said agreement (approved by the Government recently) is at pages 9-14 c.f. of (M). The relevant clauses in the agreement are clauses (12) and (13) at page 13 c.f. of (M). Clause (12) provides that in cases of breach of the agreement, it shall be lawful for the Government if they shall think fit, in addition and without prejudice to any other rights and remedies of the Government. Consequent on such breach (1) to forfeit the deposit of Rs. 1,000/- or such part thereof as the Government may deem fit (2) to terminate the agreement. Clause (13) provides that any dispute between the Secretary to the Commissioner of Civil Supplies (representing the Government) and the Agent relating to the agreement shall be referred to arbitration to such person as the Government may appoint in that behalf and the award of such arbitrator shall be final.

The question now for consideration is whether an additional clause should be inserted so as to make the amounts due to the Government towards loss or damage sustained by them in consequence of the breach of the agreement recoverable as arrears of land revenue. It may be mentioned in this connection that in the year 1939 while amending section 52 of the Revenue Recovery Act, 1864 for providing for the recovery of all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of contract, the Government issued specific executive instructions in G.O. No. 2111, Revenue, dated 17.8.1939, that it was not intended, however, that the provision should be used to recover compensation or damage for a breach of contract with the Government where the contract itself did not specifically provide for the payment of any specified sum as compensation or damage, as such recovery would amount to the Government constituting themselves as Judge of the dispute between themselves and a private party. Please see the discussions in the printed notes from 'X' on p. 13 n.f. to 20 n.f. of (A) leading to the issue of the above executive instructions.

The agreement in question does not provide any specified sum as compensation or damage for breaches of the agreement. It is not also possible to specify any sum in the contract as compensation or damage for breaches of the agreement as it will be varying according to the nature of the breach. Therefore in the case of the Government's agreement with the forwarding agents, the additional chause suggested by Finance for making the amounts due to the Government recoverable as if there are arrears of land revenue, cannot be inserted as it will be going against the orders issued in G.O. No. 2111, Revenue, dated 17.8.1939. No action therefore appears called for in respect of the agreement entered into with the forwarding

and clearing agents. Revenue, Legal and Finance may see for remarks.

x x x
4.11.48.

M "Why not include in the same category contract or agreements entered into with millers, paddy merchants and other procuring agents appointed under the Intensive Procurement Order?"

M.A.K.
5.11.48.

'M' above:- Submitted that the terms and conditions of the agreement to be executed by the authorised wholesale distributors (Procuring agents) provide only for the forfeiture of the sum of Rs. 5,000/- initially deposited with the District Supply Officer for breach of any of the provisions, regulations, and duties specified in the agreement regarding the purchase, storage and sale of foodgrains prescribed from time to time under the Intensive Procurement Order - vide para 21 of page 11 and Appendix IV at page 21 of the Pamphlet on 'Intensive Procurement Instructions'. The agreement does not however provide any specified sum as compensation or damage for a breach of any or all of the terms of the agreement istherefore in the same category as the agreement referred to in the notes at pages 1-4 above.

The form of contract entered into by the District Supply Officer with the merchant for the supply of paddy and ~~that~~ is at pages 9-15 c.f. of (B). The relevant clauses are clause 5(3) and (7) and (8) on pages 11 and 15 c.f. of (B). In this case also no amount has been specifically provided towards payment of compensation or damage and the suggestion of the Finance at 'B' on page 2 ante cannot be given effect to.

x x x
9.11.

"Clauses 3 and 6(ii) refer to damages, etc. due under the contract. Under clause 7 the G.P.O. can adjust these out of the deposit. If in any particular case, the damages exceed the amount deposited, is it not desirable to have a special provision on the lines now contemplated. I do not think the fact that no amount is specified in the contract need stand in the way. Legal may advise".

M.A.K.
10.11.1948.

REVENUE DEPARTMENT

Please see the notes from page 1 above.

2. The objection to the application of the Revenue Recovery Act for the recovery of sums payable under contracts where the amounts are not specified, was that

by such application power would be taken by the Government constituting a Judge of the dispute between themselves and a private party, which amounted to taking away the ordinary civil rights of a citizen. In other words, the Government shoul not apply the Act to recover the amounts which they themselves may decide -- please see 'Z' on pages 13 and 15 nf. of G.O. No. 2111, Revenue, dated 17.8.1939.

Clause 3 of the form of agreement on pages 9-15 c.f. of (B) provides that 'if the supplier fails to supply the balance or the whole of paddy/rice . . . . . the supplier shall be bound to pay such damages as may be fixed by the Commissioner of Civil Supplies' and that 'the award of the Commissioner shall be final and shall not be open to question in any court of law'. Clause 6(ii) provides that 'in the event of anypayment over and above the amount legally due to the supplier, either by miscalculation, oversight or by any other reason, the supplier shall be bound to make good such excess payment'. The damages referred to in column (3) will thus be fixed by the Commissioner of Civil Supplies. i.e. by Government. But the Commissioner's award is final and cannot be questioned by a Civil Court. The question of taking away the civil rights of the private party, therefore, does not arise. The excess payment referred to in clause 6(ii) will be ascertainable from records. Here there will be no dispute and there will be no question of Government themselves deciding the amount. It therefore seems that, though the actual amounts have not been specified in the agreement, the application of the Revenue Recovery Act would not be against the spirit of the instructions in G.O. No. 2111, Revenue, dated 17.8.1939.

I do not think is correct under all circumstances. There are possible legal remedies.

M.A.K.

Clause (12) of the form of agreement on pages 9-14 of (M) provides that 'it shall be lawful for the Government if they shall think it fit, in addition and without prejudice to any other rights and remedies of the Government consequent on such failure, neglect or refusal, (1) to forefeit the said deposit of Rs. 1,000 or such part thereof as the Government may deem fit .....". Clause(13) provides that 'any dispute between the Secretary to the Commissioner of Civil Supplies and the Agent relating to this agrement shall be referred to arbitration to such person as the Government may appoint in that behalf and the award of such arbitrator shall be final'. The amount of 'any 'any other rights and remedies" will presumably be determined by the Secretary to the Commissioner of Civil Supplies. Any Agent dissatisfied with the Secretary's decision may ask for arbitration and the arbitrator's award shall be final. If the arbitrator's award shall not be open to question in any court of law, in this case also there seems to be no valid objections to applying the Revenue Recovery Act.

Food may be requested to let this Department see the advice of Legal.

3. The file may be passed on to Legal.

It appears from the discussion in the G.O. at (A) that the amended Act was not intended to cover cases of the type contemplated in the Food Department note. The executive instructions issued with regard to the application of the G.O. No. 2111, Revenue, dated 17.8.1939 may be seen and particularly the discussion relating to the issue of those executive instructions. In fact, at that time, it appears that the Minister of Law was keen on having an amending Bill to the Act XV of 1939 specially to restrict the application of the Act when the contract itself does not provide for the payment of any specified sum as contemplated

compensation or damage. In view of 'A' on page 3 ante it would appear that in contracts and agreements used by the Food Department, the amounts of compensation or damage likely to result from breaches of the contracts or agreements cannot in each case be definitely specified. It therefore appears that the views of the Food Secretary at 'B' on page 5 ante are contrary to the executive instructions issued. But as noted by him, Legal may advise on the point again and Food may be requested to let this Department see after the views of Legal have been obtained."

x x x
15.11.

Revenue would prefer to comment after Legal have seen again.

x x x
26.11.

LEGAL DEPARTMENT

When it is claimed on behalf of Government that they are entitled to recover damages for breach of a contract, two questions will arise:

(i) what is the quantum of damages?

(ii) How should it be recovered?

The Revenue Recovery Act deals only with the second question and not the first. It enables the Government to utilise the summary procedure of the Act to recover an amount which it has been ascertained is due to them as compensation. It does not enable Government to assess the damage arising from the alleged breach. The view of the Food Secretary appears to involve the assumption that the power to recover the amount in a particular manner includes the power to determine what that amount is. But this is not so. In the absence of agreement, the quantum of damages can be fixed only either by the Court or by an arbitrator or by some other properly constituted authority. In view of this, it would not be possible to give effect to the intention of the Food Secretary.

x x x
14.12.

FINANCE (AA) DEPARTMENT

The case deals with the possibility of inserting an additional/in the agreements relating to the Food Department making the amounts due to the Government for breach of the agreements recoverable as if they were arrears of land revenue.

/clause

According to G.O. No. 2111, Revenue, dated 17.8.1939 the provisions of the Revenue Recovery (Amendment) Act are not applicable to cases where the contracts do not provide for the payment of any specified sum, as compensation or damages. Accordingly it does not seem possible to embody the additional clause in question in the Food Department's agreements.

x x x

20.12.

FOOD DEPARTMENT

" Revenue may now see as desired by them at page 7 above".

x x x
21.12.48.

REVENUE DEPARTMENT

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(Previous note of this Department is at pages 5-7 above).

Notes at pages 8-9 above may be perused and the file may be returned to Food. (Necessary extracts will be taken for stock file). The question of amending standard forms of agreements, etc. with which this Department is concerned is being examined in consultation with the Board of Revenue).

This Department may accept the view of the Legal Secretary at page 8 supra.

x x x
29.12.1948.

x x x (Secretary)
10.1.49.

FOOD DEPARTMENT

With reference to the ruling of Legal in a Development Department file that section 52 of the Revenue Recovery Act provides that all sums due to the Provincial Government including compensation for any loss or damages sustained by them in consequence of breach of contract may be recovered in the same manner as arrears of land revenue under the provisions of that Act unless the recovery thereof is otherwise specifically provided for the possibility of inserting an additional clause making the amounts due to the Government recoverable as if they were arrears of land revenue in the forms of contract concerning this Department was examined in the notes above. It was observed that neither the contracts entered into by the Government with the clearing and forwarding agents appointed at several ports in the Province nor the contract entered into by the District Supply Officer with the merchants for the supply of paddy, etc. provide for the payment of any specified sum as compensation or damage for breaches of the terms and conditions of the contracts. In view of this fact, it was held by Legal that it would not be possible to insert the additional clause in question in the contract referred to above. Finance and Revenue have accepted the view taken by Legal.

Yes.
M.A.K.
27.1.49.

The papers may now be recorded in a Miscellaneous Government Order for facility of reference.

x x x
26.1.

M.A.K.
27.1.49.

Recorded. G.O. Ms. No. 117, dated 31.1.1949.

Sub:- Foodgrains-Imported foodgrains reserved at several ports in the Province - Agreement entered into with forwarding agents - Recovery of sums due to Government as arrears of Land Revenue under Land Revenue Recovery Act - Papers recorded.

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/True copy/

Superintendent,
Madras Record Office.

k.y.s. 7.7.